

What is harassment?

- Discriminatory treatment based on race, color, sex (with or without sexual conduct), religion, national origin, age or disability. The law does not prohibit simple teasing, offhand comments or isolated incidents that are not serious.
- Retaliation against an individual for filing a discrimination charge, participating in an investigation or opposing discriminatory practices.
- Employment decisions based on stereotypes or assumptions about the abilities, traits, or performance of individuals of a certain sex, race, age, religion, or ethnic group, or individuals with disabilities.
- Denying employment opportunities to a person because of marriage to, or association with, an individual of a particular race, religion, national origin, or an individual with a disability.
- The conduct must be sufficiently frequent or severe to create a hostile work environment or result in a "tangible employment action."

What is a tangible employment action?

- A significant change in employment status -- hiring, firing, promotion, demotion, reassignment, change in benefits or pay.

What are examples of how harassment can culminate in a tangible employment action?

- If a supervisor fires/demotes/promotes a subordinate because she or he rejects/submits to sexual advances.

When is an agency legally responsible for harassment by a supervisor?

- Always. Even if the harassment did not lead to a tangible employment action, the agency is liable unless it can prove that:
 1. It exercised reasonable care to prevent and promptly correct any harassment.
 2. The employee unreasonably failed to complain to management or avoid harm otherwise.

Who qualifies as a supervisor in respect to employer liability?

- If the individual has the authority to recommend tangible employment decisions affecting the employee; or
- If the individual has the authority to direct the employee's daily work activities.

What are important elements of a complaint procedure?

- The agency should encourage employees to report harassment to management before it becomes severe or pervasive.
- The employer should designate more than one person to take complaints and should ensure that these individuals are in accessible locations.
- The agency should assure all workers that it will protect the confidentiality of harassment complaints to the extent possible.

Is a complaint procedure adequate if employees are instructed to report harassment to their immediate supervisors?

- No, because the supervisor may be the one committing harassment or may not be impartial. It's best for the employer or agency to designate at least one official outside an employee's chain of command to take complaints.

How should a harassment investigation be handled?

- An agency should conduct a prompt, thorough and impartial investigation. The alleged harasser should not have direct or indirect control over it.
- The investigator should interview the person complaining of harassment, the alleged harasser and others who could reasonably be expected to have relevant information.
- Before completing the investigation, the employer should take steps to make sure the harassment does not continue. If the parties have to be separated, it should not burden the employee who complained of harassment. An involuntary transfer of the complainant could constitute unlawful retaliation. Other examples of interim measures are making scheduling changes to avoid contact between the two parties or placing the alleged harasser on non-disciplinary leave with pay pending the investigation's conclusion.

How should an agency correct harassment?

- If an employer determines that harassment occurred, it should take immediate measures to stop it and ensure it does not reoccur. Disciplinary measures should be proportional to the seriousness of the offense.
- It also should correct the effects of the harassment, such as restoring leave taken because of the harassment and expunging negative evaluations in the employee's personnel file that arose from the harassment.

Do employees who are harassed by a supervisor have any responsibilities?

- Yes. They must take reasonable steps to avoid harm from the harassment. Usually they will exercise this responsibility by using the agency's complaint procedure.

Is an agency legally responsible for its supervisor's harassment if the employee failed to use the complaint procedure?

- No, unless the harassment resulted in a tangible employment action or it was reasonable for the employee not to complain to management. An employee's failure to complain would be reasonable, for example, if he had a legitimate fear of retaliation. The employer must prove that the employee acted unreasonably.